

HOUSE BILL No. 1140

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-17.4-4-11; IC 20-5-2-8; IC 31-19; IC 31-30-1-3; IC 31-34-21-5.6; IC 33-37-5-12; IC 35-36-7-3; IC 35-37; IC 35-46-1-4.

Synopsis: Endangerment of a dependent and educational neglect. Renames the crime of "neglect of a dependent" as "endangerment of a dependent". Renames as "educational neglect" the crime of "neglect of a dependent" based on deprivation of a dependent of an education. Makes conforming changes.

Effective: July 1, 2005.

Van Haaften

January 6, 2005, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1140

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-17.4-4-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) The division
3 shall deny a license when an applicant fails to meet the requirements
4 for a license. The division shall deny a license to an applicant who has
5 been convicted of any of the following felonies:

- 6 (1) Murder (IC 35-42-1-1).
- 7 (2) Causing suicide (IC 35-42-1-2).
- 8 (3) Assisting suicide (IC 35-42-1-2.5).
- 9 (4) Voluntary manslaughter (IC 35-42-1-3).
- 10 (5) Reckless homicide (IC 35-42-1-5).
- 11 (6) Battery (IC 35-42-2-1).
- 12 (7) Aggravated battery (IC 35-42-2-1.5).
- 13 (8) Kidnapping (IC 35-42-3-2).
- 14 (9) Criminal confinement (IC 35-42-3-3).
- 15 (10) A felony sex offense under IC 35-42-4.
- 16 (11) Carjacking (IC 35-42-5-2).
- 17 (12) Arson (IC 35-43-1-1).



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(13) Incest (IC 35-46-1-3).

(14) ~~Neglect~~ **Endangerment** of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).

(15) Child selling (~~IC 35-46-1-4(d)~~): **(IC 35-46-1-4(e))**.

(16) A felony involving a weapon under IC 35-47 or IC 35-47.5.

(17) A felony relating to controlled substances under IC 35-48-4.

(18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.

(19) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (18) for which the conviction was entered in another state.

The division may deny a license to an applicant who has been convicted of a felony that is not listed in this subsection.

(b) The division shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving a written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The division shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

SECTION 2. IC 20-5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section applies to:

(1) a school corporation; and

(2) an entity:

(A) with which the school corporation contracts for services; and

(B) that has employees who are likely to have direct, ongoing contact with children within the scope of the employees' employment.

(b) A school corporation or entity may use information obtained under section 7 of this chapter concerning an individual's conviction for one (1) of the following offenses as grounds to not employ or contract with the individual:

(1) Murder (IC 35-42-1-1).

(2) Causing suicide (IC 35-42-1-2).

(3) Assisting suicide (IC 35-42-1-2.5).

(4) Voluntary manslaughter (IC 35-42-1-3).

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- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery (IC 35-42-2-1) unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (7) Aggravated battery (IC 35-42-2-1.5).
- (8) Kidnapping (IC 35-42-3-2).
- (9) Criminal confinement (IC 35-42-3-3).
- (10) A sex offense under IC 35-42-4.
- (11) Carjacking (IC 35-42-5-2).
- (12) Arson (IC 35-43-1-1) unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (13) Incest (IC 35-46-1-3).
- (14) ~~Neglect~~ **Endangerment** of a dependent as a Class B felony (IC 35-46-1-4(b)(2)) unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (15) Child selling (~~IC 35-46-1-4(d)~~): **(IC 35-46-1-4(e))**.
- (16) Contributing to the delinquency of a minor (IC 35-46-1-8) unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (17) An offense involving a weapon under IC 35-47 or IC 35-47.5 unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (18) An offense relating to controlled substances under IC 35-48-4 unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3 unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (20) An offense relating to operating a motor vehicle while intoxicated under IC 9-30-5 unless five (5) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (21) An offense that is substantially equivalent to any of the offenses listed in this subsection in which the judgment of conviction was entered under the law of any other jurisdiction.
- (c) An individual employed by a school corporation or an entity

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described in subsection (a) shall notify the governing body of the school corporation if during the course of the individual's employment the individual is convicted in Indiana or another jurisdiction of an offense described in subsection (b).

SECTION 3. IC 31-19-9-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. A court shall determine that consent to adoption is not required from a parent if:

(1) the parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:

- (A) murder (IC 35-42-1-1);
- (B) causing suicide (IC 35-42-1-2);
- (C) voluntary manslaughter (IC 35-42-1-3);
- (D) rape (IC 35-42-4-1);
- (E) criminal deviate conduct (IC 35-42-4-2);
- (F) child molesting as a Class A or Class B felony (IC 35-42-4-3);
- (G) incest as a Class B felony (IC 35-46-1-3);
- (H) ~~neglect~~ **endangerment** of a dependent as a Class B felony (IC 35-46-1-4);
- (I) battery of a child as a Class C felony (IC 35-42-2-1(a)(3));
- (J) battery as a Class A felony (IC 35-42-2-1(a)(5)) or Class B felony (IC 35-42-2-1(a)(4)); or
- (K) an attempt under IC 35-41-5-1 to commit an offense described in clauses (A) through (J);

(2) the child or the child's sibling, half-blood sibling, or stepsibling of the parent's current marriage is the victim of the offense; and

(3) after notice to the parent and a hearing, the court determines that dispensing with the parent's consent to adoption is in the child's best interests.

SECTION 4. IC 31-19-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Whenever the court has heard the evidence and finds that:

- (1) the adoption requested is in the best interest of the child;
- (2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;
- (3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;
- (4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the

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adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;

(5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;

(6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:

(A) IC 31-19-6 indicating whether a record of a paternity determination; or

(B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;

has been filed in relation to the child;

(7) proper consent, if consent is necessary, to the adoption has been given; and

(8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c);

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the department's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A conviction of a felony or a misdemeanor related to the health and safety of a child by a petitioner for adoption is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

(1) Murder (IC 35-42-1-1).

(2) Causing suicide (IC 35-42-1-2).

(3) Assisting suicide (IC 35-42-1-2.5).

(4) Voluntary manslaughter (IC 35-42-1-3).

(5) Reckless homicide (IC 35-42-1-5).

(6) Battery as a felony (IC 35-42-2-1).

(7) Aggravated battery (IC 35-42-2-1.5).

(8) Kidnapping (IC 35-42-3-2).

(9) Criminal confinement (IC 35-42-3-3).

(10) A felony sex offense under IC 35-42-4.

(11) Carjacking (IC 35-42-5-2).

(12) Arson (IC 35-43-1-1).

(13) Incest (IC 35-46-1-3).

(14) ~~Neglect~~ **Endangerment** of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).

(15) Child selling (~~IC 35-46-1-4(d)~~): **(IC 35-46-1-4(e))**.

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(16) A felony involving a weapon under IC 35-47 or IC 35-47.5.

(17) A felony relating to controlled substances under IC 35-48-4.

(18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.

(19) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (18) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (11), (12), (16), or (17), or its equivalent under subdivision (19), if the offense was not committed within the immediately preceding five (5) year period.

SECTION 5. IC 31-30-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A juvenile court has concurrent original jurisdiction in cases involving adults charged with the crime of:

- (1) ~~neglect~~ **endangerment** of a dependent (IC 35-46-1-4);
- (2) contributing to delinquency (IC 35-46-1-8);
- (3) violating the compulsory school attendance law (IC 20-8.1-3);
- (4) criminal confinement of a child (IC 35-42-3-3); or
- (5) interference with custody (IC 35-42-3-4).

SECTION 6. IC 31-34-21-5.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.6. (a) A court may make a finding described in this section at any phase of a child in need of services proceeding.

(b) Reasonable efforts to reunify a child with the child's parent, guardian, or custodian or preserve a child's family as described in section 5.5 of this chapter are not required if the court finds any of the following:

- (1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:
 - (A) an offense described in IC 31-35-3-4(1)(B) or IC 31-35-3-4(1)(D) through IC 31-35-3-4(1)(J) against a victim who is:
 - (i) a child described in IC 31-35-3-4(2); or
 - (ii) a parent of the child; or
 - (B) a comparable offense as described in clause (A) in any other state, territory, or country by a court of competent jurisdiction.
- (2) A parent, guardian, or custodian of a child who is a child in need of services:
 - (A) has been convicted of:
 - (i) the murder (IC 35-42-1-1) or voluntary manslaughter

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- 1 (IC 35-42-1-3) of a victim who is a child described in
 2 IC 31-35-3-4(2)(B) or a parent of the child; or
 3 (ii) a comparable offense described in item (i) in any other
 4 state, territory, or country; or
 5 (B) has been convicted of:
 6 (i) aiding, inducing, or causing another person;
 7 (ii) attempting; or
 8 (iii) conspiring with another person;
 9 to commit an offense described in clause (A).
 10 (3) A parent, guardian, or custodian of a child who is a child in
 11 need of services has been convicted of:
 12 (A) battery (IC 35-42-2-1(a)(5)) as a Class A felony;
 13 (B) battery (IC 35-42-2-1 (a)(4)) as a Class B felony;
 14 (C) battery (IC 35-42-2-1(a)(3)) as a Class C felony;
 15 (D) aggravated battery (IC 35-42-2-1.5);
 16 (E) criminal recklessness (IC 35-42-2-2) as a Class C felony;
 17 (F) ~~neglect~~ **endangerment** of a dependent (IC 35-46-1-4) as
 18 a Class B felony; or
 19 (G) a comparable offense described in clauses (A) through (F)
 20 in another state, territory, or country;
 21 against a child described in IC 31-35-3-4(2)(B).
 22 (4) The parental rights of a parent with respect to a biological or
 23 adoptive sibling of a child who is a child in need of services have
 24 been involuntarily terminated by a court under:
 25 (A) IC 31-35-2 (involuntary termination involving a
 26 delinquent child or a child in need of services);
 27 (B) IC 31-35-3 (involuntary termination involving an
 28 individual convicted of a criminal offense); or
 29 (C) any comparable law described in clause (A) or (B) in any
 30 other state, territory, or country.
 31 (5) The child is an abandoned infant, provided that the court:
 32 (A) has appointed a guardian ad litem or court appointed
 33 special advocate for the child; and
 34 (B) after receiving a written report and recommendation from
 35 the guardian ad litem or court appointed special advocate, and
 36 after a hearing, finds that reasonable efforts to locate the
 37 child's parents or reunify the child's family would not be in the
 38 best interests of the child.
 39 SECTION 7. IC 33-37-5-12 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. The court shall
 41 order a person to pay a child abuse prevention fee of one hundred
 42 dollars (\$100) to the clerk in each criminal action in which:

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(1) the person is found to have committed the offense of:

- (A) murder (IC 35-42-1-1);
- (B) causing suicide (IC 35-42-1-2);
- (C) voluntary manslaughter (IC 35-42-1-3);
- (D) reckless homicide (IC 35-42-1-5);
- (E) battery (IC 35-42-2-1);
- (F) rape (IC 35-42-4-1);
- (G) criminal deviate conduct (IC 35-42-4-2);
- (H) child molesting (IC 35-42-4-3);
- (I) child exploitation (IC 35-42-4-4);
- (J) vicarious sexual gratification (IC 35-42-4-5);
- (K) child solicitation (IC 35-42-4-6);
- (L) incest (IC 35-46-1-3);
- (M) ~~neglect~~ **endangerment** of a dependent (IC 35-46-1-4);
- (N) child selling (~~IC 35-46-1-4~~); **(IC 35-46-1-4(e))**; or
- (O) child seduction (IC 35-42-4-7); and

(2) the victim of the offense is less than eighteen (18) years of age.

SECTION 8. IC 35-36-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This section applies to criminal actions for felonies under IC 35-42, for ~~neglect~~ **endangerment** of a dependent (IC 35-46-1-4), and for attempts of those felonies (IC 35-41-5-1).

(b) If a motion is made to postpone a trial or other court proceeding that involves an offense listed in subsection (a), the court shall consider whether a postponement will have an adverse impact upon a child who is less than ten (10) years of age and who:

- (1) is the alleged victim of an offense listed in subsection (a); or
- (2) will be a witness in the trial.

SECTION 9. IC 35-37-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):

- (1) Sex crimes (IC 35-42-4).
- (2) Battery upon a child (~~IC 35-42-2-1(2)(B)~~); **(IC 35-42-2-1(a)(2)(B))**.
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) ~~Neglect~~ **Endangerment** of a dependent (IC 35-46-1-4).
- (6) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (5).

(b) This section applies to a criminal action involving the following

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offenses where the victim is a protected person under subsection (c)(3):

(1) Exploitation of a dependent or endangered adult (IC 35-46-1-12).

(2) A sex crime (IC 35-42-4).

(3) Battery (IC 35-42-2-1).

(4) Kidnapping, confinement, or interference with custody (IC 35-42-3).

(5) Home improvement fraud (~~IC 35-42-6~~) (IC 35-43-6).

(6) Fraud (IC 35-43-5).

(7) Identity deception (IC 35-43-5-3.5).

(8) Theft (IC 35-43-4-2).

(9) Conversion (IC 35-43-4-3).

(10) ~~Neglect~~ **Endangerment** of a dependent (IC 35-46-1-4).

(c) As used in this section, "protected person" means:

(1) a child who is less than fourteen (14) years of age;

(2) a mentally disabled individual who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:

(A) is manifested before the individual is eighteen (18) years of age;

(B) is likely to continue indefinitely;

(C) constitutes a substantial impairment of the individual's ability to function normally in society; and

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or

(3) an individual who is:

(A) at least eighteen (18) years of age; and

(B) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:

(i) managing or directing the management of the individual's property; or

(ii) providing or directing the provision of self-care.

(d) A statement or videotape that:

(1) is made by a person who at the time of trial is a protected person;

(2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and

(3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for an offense listed in

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subsection (a) or (b) if the requirements of subsection (e) are met.

(e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:

(A) conducted outside the presence of the jury; and

(B) attended by the protected person;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one

(1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for medical reasons.

(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

(f) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

(1) at the hearing described in subsection (e)(1); or

(2) when the statement or videotape was made.

(g) A statement or videotape may not be admitted in evidence under this section unless the prosecuting attorney informs the defendant and the defendant's attorney at least ten (10) days before the trial of:

(1) the prosecuting attorney's intention to introduce the statement or videotape in evidence; and

(2) the content of the statement or videotape.

(h) If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

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(1) The mental and physical age of the person making the statement or videotape.

(2) The nature of the statement or videotape.

(3) The circumstances under which the statement or videotape was made.

(4) Other relevant factors.

(i) If a statement or videotape described in subsection (d) is admitted into evidence under this section, a defendant may introduce a:

(1) transcript; or

(2) videotape;

of the hearing held under subsection (e)(1) into evidence at trial.

SECTION 10. IC 35-37-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section applies to a criminal action under the following:

(1) Sex crimes (IC 35-42-4).

(2) Battery upon a child ~~(IC 35-42-2-1(2)(B))~~.
(IC 35-42-2-1(a)(2)(B)).

(3) Kidnapping and confinement (IC 35-42-3).

(4) Incest (IC 35-46-1-3).

(5) ~~Neglect~~ **Endangerment** of a dependent (IC 35-46-1-4).

(6) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through (5).

(b) As used in this section, "protected person" has the meaning set forth in section 6 of this chapter.

(c) On the motion of the prosecuting attorney, the court may order that the testimony of a protected person be taken in a room other than the courtroom, and that the questioning of the protected person by the prosecution and the defense be transmitted using a two-way closed circuit television arrangement that:

(1) allows the protected person to see the accused and the trier of fact; and

(2) allows the accused and the trier of fact to see and hear the protected person.

(d) On the motion of the prosecuting attorney or the defendant, the court may order that the testimony of a protected person be videotaped for use at trial. The videotaping of the testimony of a protected person under this subsection must meet the requirements of subsection (c).

(e) The court may not make an order under subsection (c) or (d) unless:

(1) the testimony to be taken is the testimony of a protected person who:

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- 1 (A) is the alleged victim of an offense listed in subsection (a)
 2 for which the defendant is being tried or is a witness in a trial
 3 for an offense listed in subsection (a); and
 4 (B) is found by the court to be a protected person who should
 5 be permitted to testify outside the courtroom because:
 6 (i) the court finds from the testimony of a psychiatrist,
 7 physician, or psychologist and any other evidence that the
 8 protected person's testifying in the physical presence of the
 9 defendant would cause the protected person to suffer serious
 10 emotional harm, and the court finds that the protected
 11 person could not reasonably communicate in the physical
 12 presence of the defendant to the trier of fact;
 13 (ii) a physician has certified that the protected person cannot
 14 be present in the courtroom for medical reasons; or
 15 (iii) evidence has been introduced concerning the effect of
 16 the protected person's testifying in the physical presence of
 17 the defendant, and the court finds that it is more likely than
 18 not that the protected person's testifying in the physical
 19 presence of the defendant creates a substantial likelihood of
 20 emotional or mental harm to the protected person;
 21 (2) the prosecuting attorney has informed the defendant and the
 22 defendant's attorney of the intention to have the protected person
 23 testify outside the courtroom; and
 24 (3) the prosecuting attorney informed the defendant and the
 25 defendant's attorney under subdivision (2) at least ten (10) days
 26 before the trial of the prosecuting attorney's intention to have the
 27 protected person testify outside the courtroom.
 28 (f) If the court makes an order under subsection (c), only the
 29 following persons may be in the same room as the protected person
 30 during the protected person's testimony:
 31 (1) A defense attorney if:
 32 (A) the defendant is represented by the defense attorney; and
 33 (B) the prosecuting attorney is also in the same room.
 34 (2) The prosecuting attorney if:
 35 (A) the defendant is represented by a defense attorney; and
 36 (B) the defense attorney is also in the same room.
 37 (3) Persons necessary to operate the closed circuit television
 38 equipment.
 39 (4) Persons whose presence the court finds will contribute to the
 40 protected person's well-being.
 41 (5) A court bailiff or court representative.
 42 (g) If the court makes an order under subsection (d), only the

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following persons may be in the same room as the protected person during the protected person's videotaped testimony:

- (1) The judge.
- (2) The prosecuting attorney.
- (3) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).
- (4) Persons necessary to operate the electronic equipment.
- (5) The court reporter.
- (6) Persons whose presence the court finds will contribute to the protected person's well-being.
- (7) The defendant, who can observe and hear the testimony of the protected person with the protected person being able to observe or hear the defendant. However, if the defendant is not represented by an attorney, the defendant may question the protected person.

(h) If the court makes an order under subsection (c) or (d), only the following persons may question the protected person:

- (1) The prosecuting attorney.
- (2) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).
- (3) The judge.

SECTION 11. IC 35-37-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "covered act" means any of the following offenses or an act that, if committed by a person less than eighteen (18) years of age, would be any of the following offenses if committed by an adult:

- (1) A sex crime under IC 35-42-4.
- (2) A battery against:
 - (A) a child under ~~IC 35-42-2-1(2)(B)~~; **IC 35-42-2-1(a)(2)(B)**;
 - (B) a disabled person under ~~IC 35-42-2-1(2)(C)~~; **IC 35-42-2-1(a)(2)(C)**;
 - (C) an endangered adult under ~~IC 35-42-2-1(2)(F)~~; **IC 35-42-2-1(a)(2)(E)**; or
 - (D) a spouse under IC 35-42-2-1.
- (3) ~~Neglect~~ **Endangerment** of a dependent under IC 35-46-1-4.
- (4) Incest (IC 35-46-1-3).

SECTION 12. IC 35-46-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

- (1) places the dependent in a situation that endangers the dependent's life or health;

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1 (2) abandons or cruelly confines the dependent; **or**
 2 (3) deprives the dependent of necessary support; ~~or~~
 3 ~~(4) deprives the dependent of education as required by law;~~
 4 commits ~~neglect~~ **endangerment** of a dependent, a Class D felony.

5 (b) However, the offense is:

- 6 (1) a Class C felony if it is committed under subsection (a)(1),
 7 (a)(2), or (a)(3) and results in bodily injury;
 8 (2) a Class B felony if it is committed under subsection (a)(1),
 9 (a)(2), or (a)(3) and results in serious bodily injury;
 10 (3) a Class A felony if it is committed under subsection (a)(1),
 11 (a)(2), or (a)(3) by a person at least eighteen (18) years of age and
 12 results in the death of a dependent who is less than fourteen (14)
 13 years of age; and
 14 (4) a Class C felony if it is committed under subsection (a)(2) and
 15 consists of cruel or unusual confinement or abandonment.

16 **(c) A person having the care of a dependent, whether assumed**
 17 **voluntarily or because of a legal obligation, who knowingly or**
 18 **intentionally deprives the dependent of an education as required by**
 19 **law, commits educational neglect, a Class D felony.**

20 ~~(c)~~ **(d)** It is a defense to a prosecution based on an alleged act under
 21 this section that:

- 22 (1) the accused person left a dependent child who was, at the time
 23 the alleged act occurred, not more than thirty (30) days of age
 24 with an emergency medical provider who took custody of the
 25 child under IC 31-34-2.5 when:

26 (A) the prosecution is based solely on the alleged act of
 27 leaving the child with the emergency medical services
 28 provider; and

29 (B) the alleged act did not result in bodily injury or serious
 30 bodily injury to the child; or

- 31 (2) the accused person, in the legitimate practice of his religious
 32 belief, provided treatment by spiritual means through prayer, in
 33 lieu of medical care, to his dependent.

34 ~~(d)~~ **(e)** Except for property transferred or received:

- 35 (1) under a court order made in connection with a proceeding
 36 under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5
 37 or IC 31-6-5 before their repeal); or

- 38 (2) under IC 35-46-1-9(b);

39 a person who transfers or receives any property in consideration for the
 40 termination of the care, custody, or control of a person's dependent
 41 child commits child selling, a Class D felony.

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